IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2610 OF 2007
IN
SUIT NO.3190 OF 2003

Gaurav Geet Co-operative Housing Society Ltd. ...Plaintiffs

V/s.

Ravi Real Estate Developers Pvt. Ltd. & Anr. ...Defendants

.....

Mr.Rakesh Kumar i/b S.Lanjewar for Plaintiffs.

Mr.Rajiv Narula with Mr.Anuj Narula i/b Jhangiani Narula & Associates for Defendant No.1.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 10, 2007.

P.C.

1. The relief claimed in this Motion is to permit the Defendant No.1 to remove and demolish the compound wall and grill between the specified points so as to comply with the order dated 14th May 2007/30th April 2007 passed by the Municipal Commissioner. Reliance is placed on clause (1) of the operative order of the Municipal Commissioner

to justify this relief. Clause (1) of the operative portion of the Municipal Commissioner's order dated 30th April 2007 reads thus:

> "Compound walls in between the buildings shall be demolished within 30 days of this order."

2. The points referred to in prayer clause, however, are not regarding wall running in between the buildings. In other words, the location of compound wall to be demolished by Defendant No.1 is at some other place. Counsel for the Defendant No.1 relying on the show cause notice issued by the Municipal authorities would contend that Municipal Commissioner has committed mistake in observing that the compound wall is in between the buildings. That is a matter which will have to be clarified by the Commissioner himself. This Court will not undertake the enquiry into the correctness of the stand. If the Defendant No.1 so desire, may approach the Municipal Commissioner and get the order clarified so as to permit the Defendant No.1 to demolish the compound wall which is located at some other place than between the two buildings.

3. Counsel for the Defendant No.1 contend that in fact it is in the interest of the Plaintiffs that they should consent to the order which is invited in terms of the Motion. If that is not done, in terms of the order passed by the Municipal Commissioner, certain floors in the building itself will be demolished, which will cause serious prejudice to the Plaintiffs themselves.

4. Counsel for the Plaintiffs, however, is unwilling to give such assurance or consent due to non-compliance of certain matters by the Defendant No.1 and submits that there are certain subsequent events.

5. It is not necessary for me to dwell on this matter beyond the point of referring to the contention canvassed on behalf of the parties.

6. This Motion is disposed of with liberty to the Defendant No.1 to take out fresh Motion after the Commissioner clarifies the position stated in his order dated 30th April 2007. All questions are

kept open to be decided on its own merits at the appropriate stage.

A.M.KHANWILKAR, J.